

CHARTER TOWNSHIP OF HAMPTON ORDINANCE NUMBER 33

REGULATED MATERIALS

THE CHARTER TOWNSHIP OF HAMPTON, BAY COUNTY, MICHIGAN,
ORDAINS:

SECTION 1. UNLAWFUL ACTS.

It shall be unlawful to engage in or carry on any business or activity which involves the hauling (except over public highways), utilization or disposal of any regulated material within the Charter Township of Hampton except in accordance with the provisions of this Ordinance and the terms of any license granted hereunder or to engage in any such business or activity without having a valid license granted hereunder.

SECTION 2. DEFINITIONS.

As used in this Ordinance, "regulated material" means any industrial or agricultural waste or sludge or any chemical, substance or material which is harmful or dangerous to human health or to birds, fish, wildlife, trees or other plants, or which alters the taste or odor of fish, whether in solid, liquid or other form, including, but not by way of limitation, any chemical, substance or material listed in the Michigan Critical Material Register published by the Michigan Department of Natural Resources, or determined to be toxic, harmful or hazardous by the Environmental Protection Agency pursuant to Public Law 94-469.

SECTION 3. LEGISLATIVE FINDINGS.

It is determined that the utilization and disposal of regulated materials is an activity which, if conducted on certain lands or in certain ways will result in the pollution, impairment and/or destruction of natural resources and create hazards to the public health, safety and general welfare as well as nuisances both public and private that licensing and regulation of business establishments which haul, utilize or dispose of regulated material is required to protect natural resources and the public health, safety and general welfare, and that the regulations capable of assuring the protection of the natural resources of the Township and adjacent areas and the public health, safety and general welfare.

SECTION 4. APPLICATION FOR LICENSE.

Application for a license shall be made to the Township Clerk in writing. The application shall contain the name, address and telephone number of the applicant and of any attorney, engineer, scientist, landscape architect or other professional involved in making the application, the legal description of the premises for which a license is sought, the maximum volume of regulated material to be hauled, utilized or disposed of, a statement of the measures which applicant proposes to take to control noise, vibration, dust, erosion, odors, leaching and other forms of pollution, a description of any public facilities or services required and whether or not they presently exist, and if not how applicant

proposes that they be provided and financed, and a description of measures which applicant proposes to take to assure public safety, the exclusion of children from the premises, and the lateral support of surrounding lands and structures. There shall also be included a statement of the time required to complete the activities for which a license is sought. There shall be attached to and considered a part of the application a topographic map showing the present contour of the premises and the contour proposed upon completion of the activities for which a license is sought. By map, description or both the application shall show landscaping to be done and other measures to be taken to leave the premises in a usable and attractive condition. Either upon the aforesaid topographic map or upon a separate map there shall be shown:

- (a) The ownership and boundaries of the land which operations are to be conducted.
- (b) Description of natural and improved drainage surface and features.
- (c) Location of all wells within one-half mile of the application site.
- (d) Location of all occupied dwellings within one-half mile of the application site.
- (e) Soil characteristics of the application site.
- (f) Limits of regulated material application within the boundaries of the application site.
- (g) Proposed access to the application site.
- (h) Proposed buffers or features to control drainage from the area where regulated material is to be applied.
- (i) Proposed ground and surface water monitoring points.
- (j) Proposed delivery, storage, and transfer site, if within the application site.

There shall be attached to and considered a part of the application an environmental impact statement describing the environmental consequences of the proposed activities both during the operations and thereafter, and setting forth any limitations or restrictions on the proposed operations that are necessary to protect the environment. The environmental impact statement shall include a description of the surface and sub-surface geological characteristics of the premises, including identification of bed rock and rock outcrops, detailed soil analysis and ground water table, the location of existing or desirable test wells, water sample analysis from necessary test wells, and description of regulated material to be involved including whether it is liquid or solid, its chemical, biological and bacteriological content, whether it has been treated, and if so how, and the place or places of origin. There shall also be a description of the type and degree of treatment or processing to which the regulated materials will be subjected on the premises including the nature and amount of any odor counteractants to be added, a description of the crop system or ground cover, if any, to be used to assimilate nutrients, a description of the application method and equipment to be used with proposed rate of application and application schedule.

SECTION 5. PROCESSING OF APPLICATION.

Upon receipt of such application, it shall be transmitted by the Clerk to the Township Board which shall first retain independent professional advisors to analyze the application and environmental impact statement and report thereon. It shall also estimate the cost of the services of such advisors and the cost of legal counsel to supervise the proceedings and any other costs involved in connection with the processing of the application. The total of such costs shall be reported to the applicant who shall pay the amount thereof to the Township Treasurer before the work of said professionals begins. If, at any time during the processing of the application, it appears that additional expenditures on the part of the Township are required in order that the Township officials may properly discharge their obligations to the public, the amount of such expenditures shall be reported to the applicant and paid by the applicant to the Township Treasurer forthwith. Prior to the granting of any license hereunder, the Township Board shall refer the matter to the Planning Commission for advice with respect to the impact of the grant of a license upon existing planning for land use and development in the vicinity of the premises.

SECTION 6. PUBLIC HEARING.

Prior to the granting of any license hereunder the Township Board shall conduct a public hearing with notice of the date, time, place and purpose published in a newspaper of general circulation in the Township at least fourteen (14) days prior to said public hearing.

SECTION 7. STANDARDS FOR DECISION.

In determining whether or not to grant the license applied for, the Township Board shall consider the application, the reports of its professional advisors, the report of the Planning Commission and the evidence presented at the public hearing. It shall also consider the determination of the people of the State of Michigan in the Constitution of 1963, Article IV, Section 52, that the conservation and development of the natural resources of the state are of paramount public concern in the interest of the health, safety and general welfare of the people. It shall grant a license only if it first determines that the proposed activities will not pollute, impair or destroy significant natural resources, create hazards to the public health or safety, or result in public or private nuisance that is reasonably predictable.

SECTION 8. CONDITIONS APPLICABLE TO EVERY LICENSE.

Every license granted hereunder shall be subject to the following conditions which need not be stated on the face thereof:

- (a) No portion of the premises which is subject to flooding or which has a slope of more than 5° shall be used for the utilization or disposal of regulated material.
- (b) All regulated material hauled to or from the premises shall be transported only in tightly covered, waterproof, leakproof containers or vehicles, and all vehicles used shall be kept clean and free of regulated material including tires, wheels, chassis and undercarriage.

SECTION 9. SPECIAL CONDITIONS, BONDS AND INSURANCE.

The Township Board may attach any special conditions restrictions, requirements or limitations to any license which it regards as reasonably necessary to protect the public health, safety and general welfare, prevent pollution, impairment or destruction of natural resources and avoid the creation of public or private nuisances. The Township Board may also set such terms and conditions for bond or liability insurance protection as may seem reasonably necessary and appropriate.

SECTION 10. REGULATION OF LICENSED OPERATIONS.

The Township shall obtain the services of qualified technicians and professionals to monitor the operations of the licensee at such intervals as they may consider necessary and to report to the Township whether the operations are being conducted in accordance with the terms of the license and the provisions of this Ordinance and whether or not the operations are resulting in any nuisance or any hazard to the public health, safety or general welfare or are causing pollution, impairment or destruction of natural resources.

SECTION 11. PAYMENT OF COST OF REGULATION - EFFECT OF FAILURE TO PAY.

Upon receiving bills for the services and expenses of the persons designated to monitor the operations of any licensee, the Township Treasurer shall forward them to the licensee by first class mail. The licensee shall pay them within ten (10) days of mailing by the Township Treasurer. Whenever any such bill has not been paid within the time specified above, the license shall automatically be suspended until payment is made.

SECTION 12. SUSPENSION OF LICENSE.

The Township Board may suspend any license upon finding that the licensee has violated any provision of this Ordinance or any term or condition of the license. The Township Supervisor may suspend any license without notice upon determining that such suspension is necessary to prevent immediate danger to health, life or property. Except as provided in the preceding sentence and in section 11 hereof, a license shall be suspended only after the following proceedings. The licensee shall be served with a written notice of the intention of the Township Board to suspend the license, which notice shall specify the alleged facts and reasons which form the basis for the proposed suspension, and shall specify the date, time and place when the Township Board shall meet to consider the proposed suspension. Such notice shall be served by mailing by first class mail addressed to licensee at his address as shown on the application or at such other address as licensee may from time to time furnish the Township Clerk in writing. At the time, place and date specified, which shall be at least ten (10) days after service of the notice, the Board shall hear and consider evidence regarding the matters mentioned in the notice and shall afford the licensee an opportunity to be heard and to present evidence. The license shall not be suspended unless the Board determines the existence of grounds for suspension as set forth above. Any suspended license shall be reinstated by the Supervisor or Township Board, whichever suspended it, upon finding that the reasons and grounds for suspension no longer exist.

SECTION 13. EXCEPTIONS.

Excepted from licensing and regulation under this Ordinance is the use of lawful materials as herbicides, fertilizers, fungicides, pesticides and soil conditioners in the maintenance of lawns and gardens and in agricultural operations where no excavating or burying is involved except agricultural plowing and cultivating. Activities associated with the generation of electric power by a public utility are exempted from licensing and regulation under this Ordinance except that any such utility shall transmit to the Township Clerk a copy of every report submitted to the State of Michigan or any agency thereof regarding materials listed on the Michigan Critical Materials Register, said report or reports to be transmitted to the Clerk at the same time as to the State of Michigan or any Agency thereof. All exceptions provided for in this paragraph shall be reviewable by the Township Board from time to time but at least every two (2) years for the purpose of determining the continued reasonability of such exceptions in the interest of health, safety and general welfare of the inhabitants of the Township and to insure the protection of the air, water and other natural resources of the Township from pollution, impairment, and destruction.

SECTION 14. VIOLATIONS AND PENALTIES.

Violation of this Ordinance shall be punished by imprisonment in the county jail for not more than ninety (90) days or by a fine of not more than One Hundred (\$100.00) Dollars, or by both such fine and imprisonment. Each and every day on which a violation continues shall constitute a distinct and separately punishable violation. Any violation of any state or federal law or regulation arising out of or in the course of any business or activity regulated by this Ordinance shall also constitute a violation of this Ordinance.

SECTION 15. SEVERABILITY.

If any section, sub-section, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not effect the validity of the remaining portion hereof.

SECTION 16. EFFECTIVE DATE.

This Ordinance shall take effect on the 31st day after publication following adoption as required by law.